



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

[Docket No. 21-13]

Lora L. Thaxton, M.D.; Decision and Order

On March 24, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Lora L. Thaxton, M.D. (hereinafter, Respondent) of Naples, Florida. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. FT3429227. It alleged that Respondent is without "authority to handle controlled substances in Florida, the state in which [Respondent is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that the Florida Department of Health issued an Order of Emergency Restriction of License on April 14, 2020. *Id.* at 1. This Order, according to the OSC, suspended Respondent's Florida medical license following its findings, *inter alia*, that a medical evaluator from the impaired practitioner program for the Florida Board of Medicine had determined that Respondent was "unable to practice medicine with reasonable skill and safety to patients due to alcohol use disorder." *Id.* at 2. According to the OSC, Respondent subsequently entered into a settlement agreement with the Florida Board of Medicine on February 5, 2021,¹ under which Respondent's medical license would remain suspended until she demonstrated her ability to practice medicine with reasonable skill and safety, submitted to an evaluation by the impaired practitioner program, and petitioned the Florida Board of Medicine for reinstatement of her medical license. *Id.*

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each

¹ The Government's Exhibit demonstrates that the Florida Board of Medicine approved the settlement agreement on April 5, 2021. See Government's Motion for Summary Disposition, Exhibit D, at 1-2.

option, and the consequences for failing to elect either option. *Id.* at 2-3 (citing 21 C.F.R. § 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

By letter dated April 29, 2021, Respondent timely requested a hearing.² Request for Hearing (Official Notification). The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Paul E. Soeffing (hereinafter, ALJ). On April 29, 2021, the ALJ issued an Order for Evidence of Lack of State Authority and Directing the Filing of Evidence Regarding the Service of the Order to Show Cause, which directed the parties to brief the Government's allegation that Respondent lacks state authority to handle controlled substances. Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD), at 2. The Government timely filed its Submission of Evidence and Motion for Summary Disposition (hereinafter, Government Motion) on May 18, 2021.³ *Id.*

In its motion, the Government argued that because Respondent lacks authority to handle controlled substances in Florida, the state in which she is registered with the DEA, the DEA must therefore revoke her registration. Government Motion, at 5. Respondent did not answer the Government Motion. RD, at 3.

On June 4, 2021, the ALJ issued an Order Directing Compliance after Respondent failed to file her response to the Government Motion by the June 3, 2021 deadline. Order Directing Compliance, at 1. The Order Directing Compliance directed Respondent to file her response by

² According to the Declaration of the lead Diversion Investor (hereinafter, DI) assigned to this case, the DI mailed two copies of the OSC to Respondent on March 31, 2021. Government Motion Exhibit 1, at 1-2. By email dated April 2, 2021, Respondent's counsel indicated that Respondent had received the OSC on April 2, 2021, and would be filing a request for hearing within 30 days, as well as a proposed corrective action plan. Request for Hearing (Emailed). Because Respondent's hearing request, was filed within thirty days of the DI's mailing the OSC on April 29, 2021, I find that the Government's service of the OSC was adequate and that the hearing request was timely filed.

³ On May 7, 2021, the Government filed an Unopposed Motion for Extension of Time. On May 10, 2021, the ALJ issued an Order Granting Government's Unopposed Motion for Extension of Time, extending the Government's due date from May 17, 2021, to May 18, 2021.

June 11, 2021, and to show good cause for failing to meet the deadline. *Id.* at 2. Respondent did not answer the Order Directing Compliance. RD, at 3.

On July 6, 2021, the ALJ granted the Government Motion, finding that the Government had demonstrated that Respondent lacked state authority in the State of Florida and the “Respondent has failed to counter the Government’s evidence or otherwise dispute the allegation that she lacks state authority.” RD, at 5. The ALJ further found that “[a]s a matter of law, the facts [of this case] can only result in one outcome and a hearing is therefore unnecessary to resolve this action.” *Id.* at 6.

The ALJ recommended that Respondent’s DEA registration be revoked and that any applications to renew her registration or any applications for any other DEA registrations in Florida be denied based on her lack of state authority to practice medicine or handle controlled substances in Florida. RD, at 7. By letter dated August 2, 2021, the ALJ certified and transmitted the record to me for final Agency action. In the letter, the ALJ advised that neither party filed exceptions.

I issue this Decision and Order based on the entire record before me. 21 C.F.R. § 1301.43(e). I make the following findings of fact.

FINDINGS OF FACT

Respondent’s DEA Registration

Respondent is the holder of DEA Certificate of Registration No. FT3429227 at the registered address of 12079 Wicklow Ln, Naples, FL 34120. Government Motion Exhibit (hereinafter, GX) A (Controlled Substance Registration Certificate). Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent’s registration expires on November 30, 2021. *Id.*

The Status of Respondent’s State License

On April 14, 2020, the Florida Department of Health issued an Order of Emergency Restriction of License (hereinafter, Emergency Restriction) that restricted Respondent's license to practice medicine in Florida. GX C, at 1.

According to the Emergency Restriction, in December 2019, a nurse at the hospital where Respondent was employed reported that Respondent appeared impaired while at work. *Id.* at 2. Respondent was asked by the hospital supervisor to provide a breath sample for a breath alcohol test, the result of which was positive for alcohol at a concentration indicating that she was impaired. *Id.*

On or about December 6, 2019, Respondent self-reported the results of the breath alcohol test to the Professionals Resource Network (hereinafter, PRN), the impaired practitioner program for the Florida Board of Medicine that monitors the evaluation, care, and treatment of impaired practitioners licensed by the Florida Department of Health. *Id.* On or about January 13, 2020, Respondent was evaluated by an expert in addiction medicine at PRN's request. *Id.*

According to the Emergency Restriction, as of April 14, 2020, Respondent had not undergone the PRN recommended treatment or engaged in PRN monitoring. *Id.* at 4.

The Emergency Restriction concluded that "Respondent's continued unrestricted practice as a medical doctor constitutes an immediate, serious danger to the health, safety or welfare of the citizens of the State of Florida" and ordered that her license be restricted until a PRN or a PRN-approved evaluator notified the Florida Department of Health that Respondent could safely resume practicing medicine. *Id.* at 4 and 6. The Emergency Restriction also ordered a proceeding seeking formal discipline of Respondent's license. *Id.* at 6.

On April 24, 2020, the Florida Department of Health filed an Administrative Complaint before the Florida Board of Medicine seeking various potential penalties including permanent revocation or suspension of Respondent's license. GX D, at 12-14.

On October 26, 2020, the Florida Department of Health and Respondent proposed a Settlement Agreement. *Id.* at 4 and 11. Under the Settlement Agreement, Respondent would

pay an administrative fine, would reimburse the Florida Department of Health for the costs incurred in the case, and Respondent's medical license would be suspended until she could demonstrate to the Florida Medicine Board her ability to practice medicine with reasonable skill and safety. *Id.* at 5-7. On April 5, 2021, the Florida Board of Medicine issued a Final Order that approved the Settlement Agreement. *Id.* at 1-2.

According to Florida's online records, of which I take official notice⁴, Respondent's license is listed as "delinquent"⁵ and Respondent is not authorized to practice medicine in Florida. Florida Department of Health License Verification, <https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders> (last visited date of signature of this Order). Accordingly, I find that Respondent is not currently licensed to practice medicine in Florida, the state in which Respondent is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,*

⁴ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

⁵ Within the Florida Department of Health License Verification database, "delinquent" means "the licensed practitioner who held a clear active or clear inactive license, but failed to renew the license by the expiration date. The licensed practitioner is not authorized to practice in the state of Florida."

M.D., 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012);

Frederick Marsh Blanton, M.D., 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to Florida statute, “A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance.” Fla. Stat. § 893.05(1)(a) (2021). Further, a “practitioner” as defined by Florida statute includes “a physician licensed under chapter 458⁶.” *Id.* at § 893.02(23).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Florida. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in Florida. Thus, because Respondent lacks authority to practice medicine in Florida and, therefore, is not authorized to handle controlled substances in

⁶ Chapter 458 regulates medical practice.

Florida, Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent's DEA registration be revoked.

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. FT3429227 issued to Lora L. Thaxton, M.D. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Lora L. Thaxton to renew or modify this registration, as well as any other pending application of Lora L. Thaxton for additional registration in Florida. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

Anne Milgram,
Administrator.

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